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In The
Supreme Court of the United States

SUSAN SMITH,

Petitioner,

v.

AMERICAN AIRLINES, INC., et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a Railway Labor Act plaintiff can litigate the merits of her dispute with her employer in federal court under the "repudiation" exception of *Vaca v. Sipes*, 386 U.S. 171 (1967), or whether her sole remedy is an order compelling arbitration, where the employer refused to arbitrate a grievance on the basis of its contention that the plaintiff was not covered by the collective bargaining agreement.

2. Whether the Court of Appeals should remand a case to the District Court for the purpose of allowing the plaintiff to request leave to amend her complaint to seek a particular form of relief, where the plaintiff had not sought such relief in the District Court and the law was unsettled as to whether the plaintiff has standing to seek such relief but the Court of Appeals, *sua sponte*, declared such relief to be the sole relief available to the plaintiff?

PARTIES TO THE PROCEEDING

Susan Smith is the Petitioner herein. She was the plaintiff in the District Court and the appellant in the Court of Appeals.

American Airlines, Inc., TWA Airlines LLC, and Air Line Pilots Association, Int'l, are the Respondents herein. They were the defendants in the District Court and the appellees in the Court of Appeals.

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PETITION FOR WRIT OF CERTIORARI

Susan Smith petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 414 F.3d 949 and is printed in full at pages 1 through 10 of the Appendix hereto (hereinafter "App."). The Memorandum and Order of the District Court is not reported and is printed in full in the Appendix (App. 11-25), as is the District Court's Judgment (App. 26).

STATEMENT OF JURISDICTION

The Court of Appeals opinion was entered on July 18, 2005 (App. 1), and its judgment was entered that same date. Petitioner filed her Appellant's Petition for Panel Rehearing on July 29, 2005. (App. 28-35). The Court of Appeals denied that petition on August 15, 2005. (App. 27).

This Court has jurisdiction to consider this petition pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves 45 U.S.C. § 184, which is printed in full in the Appendix (App. 36-37). This case also involves

Rule 15(a) of the Federal Rules of Civil Procedure, which is printed in full in the Appendix. (App. 38).

STATEMENT OF THE CASE

In 2001, Respondent, American Airlines, Inc. ("AA")¹, purchased substantially all of the assets of TWA, Inc. ("TWA"). (App. 1). Under the purchase agreement, AA agreed to hire all of TWA's union employees, with certain exceptions. (App. 3).

Petitioner, Susan Smith, was a pilot for TWA, and a member of the Air Line Pilots Association ("ALPA"), at the time AA acquired TWA's assets. (App. 1). AA decided that it would not hire Petitioner as a pilot for AA following the closing of the asset purchase. (App. 1).

Petitioner's union, ALPA, filed several grievances on behalf of Petitioner protesting AA's refusal to hire her. (App. 1, 15-16). ALPA filed these grievances pursuant to a Transition Collective Bargaining Agreement entered into between AA and ALPA, which took effect upon the closing of AA's purchase of the TWA assets. (App. 3). The collective bargaining agreement conferred upon employees dissatisfied with a personnel decision the right to a hearing with the company on the matter. (Transition Collective Bargaining

¹ The designation "AA" refers collectively to American Airlines, Inc., and its wholly-owned subsidiary, TWA LLC, which American established to hold title to the assets of the former TWA, Inc., until such time as those assets could be integrated into American.

Agreement at § 21 (Appellant's Separate Appendix² at pp. 359-62)). If, after the hearing, the employee remains dissatisfied, then the matter is to be submitted for arbitration before a System Board of Adjustment, established under the agreement "[i]n compliance with Section 204, Title II, of the Railway Labor Act, as amended."³ (Transition Collective Bargaining Agreement at § 22(B) (Appellant's Separate Appendix at p. 363)). The System Board of Adjustment is composed of two company representatives, two union representatives and a neutral "referee". (*Id.* at § 22(C)(1)). The System Board of Adjustment then renders a final decision on the matter. (*Id.* at § 22(M) (Appellant's Separate Appendix at p. 366)).

AA refused to process any of the grievances filed by ALPA on Petitioner's behalf. (App. 6). ALPA then attempted to bring the matter before the System Board of Adjustment. (App. 6). AA, however, refused to docket the matter before the Board or to otherwise arbitrate the dispute. AA claimed that the collective bargaining agreement did not cover Petitioner's dispute with the company. (App. 6).

Petitioner subsequently filed suit in the United States District Court for the Eastern District of Missouri. (App. 11). Petitioner claimed, *inter alia*, that AA's refusal to hire her violated the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.* (the "Act"), in that the refusal violated the purchase

² The term "Appellant's Separate Appendix" denotes the record submitted by Petitioner herein in the Court of Appeals pursuant to Rule 30 of the Federal Rules of Appellate Procedure and Rule 30A of the Eighth Circuit Rules of Appellate Procedure.

³ See 45 U.S.C. § 184 (reproduced in the Appendix hereto at pages App. 36 through App. 37).

agreement between AA and TWA and the collective bargaining agreement between AA and ALPA. (Second Amended Complaint (Appellant's Separate Appendix at pp. 57-72)). Petitioner prayed for monetary and other relief, but she did not ask the District Court for an order compelling AA to arbitrate the dispute as to whether AA had an obligation to hire Petitioner. (*Id.*)

AA moved for summary judgment, and the District Court granted the motion. (App. 11, 26). In the view of the District Court, the Act only governs disputes between a carrier and its "employee". (App. 18-19). Since AA never hired Petitioner, said the District Court, Petitioner was never an "employee" of AA and, therefore, could assert no claim against AA under the Act. (*Id.*)

Petitioner appealed to the United States Court of Appeals for the Eighth Circuit, which had jurisdiction pursuant to 28 U.S.C. § 1291. The Court of Appeals never reached the issue as to whether Petitioner constituted an "employee" for purposes of the Act. (App. 1-10).

Instead, the Court noted that the Act contemplates that disputes between employers and employees governed by a collective bargaining agreement "must be resolved only through the [Act's] mechanisms, including the carrier's internal dispute-resolution processes and an adjustment board established by the employer and the unions." (App. 4-5 (quoting *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 253 (1994))). The Court continued that, under the Act, employment "disputes are subject to mandatory arbitration before an adjustment board which has primary jurisdiction to construe the collective bargaining agreement. The aggrieved employee 'may not resort to the

courts in the instance.' " (App. 5 (quoting *Penn.R.R. v. Day*, 360 U.S. 548, 552 (1959))).

The Court noted that this Court "has recognized exceptions to this rule, situations 'in which the employee should not be limited to the exclusive remedial procedures established by the contract.'" (App. 5 (quoting *Vaca v. Sipes*, 386 U.S. 171, 185 (1967))). One such exception which, if applicable, would have allowed Petitioner to litigate her claim under the Act "in federal court without exhausting the adjustment board remedy provided by the transition collective bargaining agreement," (App. 5), occurs when the employer's conduct "amounts to a repudiation of those contractual procedures." (App. 5 (quoting *Vaca*, 386 U.S. at 185)).

The Court of Appeals rejected Petitioner's argument that AA's conduct in this case constituted repudiation of the dispute-resolution mechanisms set forth in the transition collective bargaining agreement such that Petitioner could litigate her claim in federal district court. (App. 5). The Court did not view AA's refusal to process AI PA's grievances on behalf of Petitioner and AA's refusal to arbitrate the matter before the System Board of Adjustment as a "repudiation" of the collective bargaining agreement. (App. 7). Rather, the Court viewed AA's actions as simply the result of AA asserting the position that the collective bargaining agreement "did not apply to this dispute" because Petitioner was not an employee covered by that agreement. (App. 6-7).

The Court of Appeals viewed the matter as "a classic dispute over 'arbitrability,' that is, the question whether AA and ALPA agreed in the transition agreement to submit this type of disagreement to the adjustment board.